

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 995 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MAHENDIHUSAIN NURUDDIN SAIYED ACCUSD. NIRUDDIN BADAMIYA

Versus

POLICE SUB INSPECTOR

Appearance:

MR MJ DAGLI for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

PUBLIC PROSECUTOR for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/02/99

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the prayer is made for quashing externment order dated 7.9.1998 and the order of Appellate Authority dated 13.10.1998 passed against the petitioner under section 56 of the Bombay Police Act externing him from Ahmedabad City, Ahmedabad (Rural),

Gandhinagar, Kheda and Vadodara districts for a period of two years.

The brief facts are that a show cause notice dated 30.5.1998 was issued to the petitioner to show cause why he should not be externed for a period of two years from the aforesaid districts. The notice was issued on the basis of registration of four criminal cases against the petitioner and also on the basis of statements of seven witnesses who gave statements against the petitioner.

The petitioner appeared and filed reply to the show cause notice. He also filed his defence. After considering the material on record the impugned externment order was passed against the petitioner on 7.9.1998 externing the petitioner from the aforesaid four districts. An appeal was preferred by the petitioner against the aforesaid order which was dismissed on 13.10.1998. It is, therefore, this writ petition.

On similar allegations, a show cause notice was issued to another person whose case was considered by this Court in Special Criminal Application No.1009 of 1998 which was decided on 23.12.1998. The grounds are almost identical and as such no different view in this writ petition can possibly be taken.

The first ground is that in the show cause notice it was mentioned that four cases were pending against the petitioner, inter alia, one case under section 395 of the IPC registered in 1993 was also said to be pending. But this case resulted in acquittal on 23.5.1997 i.e. one year before issuance of show cause notice. The show cause notice was thus the result of non application of material on record. If the petitioner was acquitted about one year before the issuance of show cause notice and it was mentioned that the said case was pending against him, it can safely be said that the Externing Authority was swayed away by the pendency of case under section 395 of the IPC. It was a ground non existent altogether. On account of this non application of mind the show cause notice as well as externment order cannot be sustained. As a consequence thereof the order of the Appellate Authority also cannot be sustained.

Another ground of non application of mind is mention of commission of offence punishable under Chapters XVI & XVII of the Indian Penal Code. The remaining three offences shown in the show cause notice are hardly punishable under Chapter XVII of the Indian

Penal Code.

Another infirmity in the impugned order is that the defence evidence was not considered by the two authorities. Next defect in the impugned order is that the authorities have placed reliance upon extraneous material viz, affidavits of 25 persons consisting of 13 village sarpanches and 12 residents of village. Copies of these affidavits were not supplied to the petitioner despite his demand nor these affidavits were disclosed in the show cause notice. If these affidavits were subsequently and abruptly accepted on record by the Externment Authority and the petitioner was not supplied their copies, he was certainly prevented from giving effective reply and producing effective defence in support of his contention and this has also rendered the impugned order invalid.

No cogent reason has been given for externment of the petitioner from five districts. This was also discussed in detail in the case of the other petitioner in Special Criminal Application No.1009 of 1998.

For the aforesaid reasons, the externment orders of the Externment Authority and the Appellate Authority cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The orders of the Externment Authority and the Appellate Authority are hereby quashed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt